IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.869 OF 2001

IN

WRIT PETITION NO.1278 OF 1999

Shri J.Y. Konnur and ors. ...Appellants

v/s

M/s Abbott Laoboratories (I) Ltd. and ors. ...Respondents

Mr Sandip Chaubal for Appellants.

Mr C.U. Singh with Mr R.N. Salgaonkar i/b Salgaonkar and Co. for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 27TH SEPTEMBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the order dated 15th July 1999 passed by the learned Single Judge of this Court in writ petition No.1278 of 1999. That petition was filed by the respondents challenging the order dated 7th April 1999 made by the Industrial Court in complaint (ULP) No.273 of 1996. Complaint (ULP) No.273 of 1996 was filed by the present appellants claiming that the respondent - Company is guilty of having committed unfair labour practice in not extending the benefit of voluntary retirement scheme agreed by it on 1st January 1996. Admitted facts are that the appellants were in the employment of the respondent - Company. A voluntary retirement scheme was announced by the respondents on 17th August 1995 for its employees. The present appellants opted for that scheme, submitted their options, those options were accepted by letter dated 13th September 1995 and it was declared that with effect from 24th September 1995, the appellants will cease to be in the employment of the respondents. It appears that on 1st January 1996, second voluntary retirement scheme was declared and at that time, the complaint was filed. The principal case in the complaint was that while submitting option for voluntary

retirement scheme, the appellants, except appellants Mr S.N. Gulwadi and Mrs M.V. Karve, had put in a note which reads as under :-

> "This above application is subject to request from me that if any improvement in the above scheme is done in future, the same benefits should be extended to me."

. The case of the appellants was that as their option was accepted subject to this note, they were entitled to the benefits of the scheme dated 1st January 1996. The refusal of the respondent - management to extend the benefits of the scheme dated 1st January 1996 to the appellants amounted to breach of the agreement between the parties arrived at as a result of the acceptance of the note by the respondents. The Industrial Court accepted the case of the appellants and made an order in favour of the appellants directing the respondents to extend the benefits of second voluntary retirement scheme to the appellants. That order was challenged before this Court in writ petition referred to above. That writ petition has been allowed by the learned Single Judge and the order passed by the Industrial Court is set aside. Thus, it is the order of the learned Single Judge which is under challenge in this appeal.

2. We have heard learned counsel for both the sides at length. Even assuming that because of the note quoted above, an agreement came into existence between the appellants and the employer - Company that if any improvement is made in the voluntary retirement scheme in future, the appellants would be given benefits of that improved scheme, the appellants will have to show that the second scheme is an improvement of the first scheme. The learned counsel appearing for appellants fairly conceded that in the complaint, there are no pleadings that the voluntary retirement scheme dated 1st January 1996 is an improvement of the earlier scheme under which the appellants retired. From the oral evidence of the appellants, the learned counsel could not point out that there was any case made out as to how and why the scheme dated 1st January 1996 is an improvement on the earlier scheme. On the contrary, we find that there is a statement made by the witness examined on behalf of the complainants that the scheme dated 17th August 1995 under which the appellants retired was never revised by the management. The agreement between the parties, even accepting the case of the appellants, was that in case the scheme dated 17th August 1995 is improved in future, benefit of the improved scheme would be given to the appellants. The statement made on behalf of the appellants that the

scheme dated 17th August 1995 was never revised y the Company, in our opinion, is enough to non-suit the complainants. Perusal of the order passed by the learned Single Judge shows that it is a well considered order, all aspects of the matter are considered in detail. We see no reason to take a different view than the view taken by the learned Single Judge. Appeal is rejected.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)